

From: [LERS, EOIR \(EOIR\)](#)
To: [LERS, EOIR \(EOIR\)](#); [All of Judges \(EOIR\)](#); [BIA BOARD MEMBERS \(EOIR\)](#); [BIA ATTORNEYS \(EOIR\)](#); [All of OCIJ JLC \(EOIR\)](#); [Alder Reid, Lauren \(EOIR\)](#); [Allen, Patricia M. \(EOIR\)](#); [Baptista, Christina \(EOIR\)](#); [Barnes, Jennifer \(EOIR\)](#); [Bauder, Melissa \(EOIR\)](#); [Berkeley, Nathan \(EOIR\)](#); [BIA TEAM JLC](#); [BIA TEAM P \(EOIR\)](#); [Brazill, Caitlin \(EOIR\)](#); [Burgie, Brea \(EOIR\)](#); [Burgus, Elizabeth \(EOIR\)](#); [Carballo, Vivian \(EOIR\)](#); [Cicchini, Daniel \(EOIR\)](#); [Cowles, Jon \(EOIR\)](#); [Curry, Michelle \(EOIR\)](#); [Evans, Brianna \(EOIR\)](#); [Grodin, Edward \(EOIR\)](#); [Hartman, Alexander \(EOIR\)](#); [Kaplan, Matthew \(EOIR\)](#); [King, Jean \(EOIR\)](#); [Korniluk, Artur \(EOIR\)](#); [Lang, Steven \(EOIR\)](#); [Lovejoy, Erin \(EOIR\)](#); [Martinez, Casey L. \(EOIR\)](#); [Noferi, Mark \(EOIR\)](#); [Park, Jeannie \(EOIR\)](#); [Powell, Karen B. \(EOIR\)](#); [Ramirez, Sergio \(EOIR\)](#); [Rimmer, Phillip \(EOIR\)](#); [Rodrigues, Paul A. \(EOIR\)](#); [Rodriguez, Bernardo \(EOIR\)](#); [Rothwarf, Marta \(EOIR\)](#); [Sanders, John W. \(EOIR\)](#); [Schaaf, Joseph R. \(EOIR\)](#); [Sheehey, Kate \(EOIR\)](#); [Stutman, Robin M. \(EOIR\)](#); [Taufa, Elizabeth \(EOIR\)](#); [Vayo, Elizabeth \(EOIR\)](#); [Wilson, Amelia \(EOIR\)](#)
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Subject: Policy & Case Law Bulletin - March 30, 2018
Date: Friday, March 30, 2018 7:58:48 PM

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Office of Policy | Legal Education and
Research Services Division

Policy & Case Law Bulletin March 30, 2018

White House

- [President Trump Announces “Wind-Down” of Deferred Enforced Departure for Liberians](#)
DED for Liberians is set to expire on March 31, 2018. On March 27, 2018, the President announced that current conditions in Liberia do not warrant an additional extension of DED. The President directed the Secretary of Homeland Security to take appropriate measures after the expiration date passes, including a one-year period, where current, otherwise eligible Liberian DED beneficiaries may remain in the United States with employment authorization

Federal Agencies

DOJ

- [Attorney General Extends Briefing Deadlines in Matter of A-B-](#) — EOIR
Order No. 4139-2018
The Attorney General denied DHS’s request to suspend the briefing schedule and clarify the issue presented in the case, and granted, in part, both parties’ request to extend the deadline to submit briefs. The new briefing deadlines are April 20, 2018, for the parties, May 4, 2018, for reply briefs, and April 27, 2018, for interested amici. The Attorney General will review issues relating to “[w]hether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable ‘particular social group’ for purposes of an application for asylum or withholding of removal.” [Matter of A-B-, 27 I&N Dec. 227 \(A.G. 2018\)](#).
- [OCAHO Publishes Decision Thompson v. Prestige Towing Servs.](#) — EOIR
13 OCHAO no. 1309
The court found that the complainant had not demonstrated eligibility for the extraordinary remedy of equitable tolling of the 180 day statute of limitations for bringing an action under the anti-discrimination provisions of the Immigration and Nationality Act, INA § 274B(d)(3).

- [DOJ and West Palm Beach Announce Settlement Related to City's Resolution and DOJ's Immigration Cooperation Grant Conditions](#)

DOJ had been investigating whether the city's Resolution Number 112-117 complied with 8 USC § 1373. The city of West Palm Beach agreed to and disseminated a memorandum to its employees stating its position that local laws do not restrict information sharing with DHS, and DOJ issued a letter to the city concluding its review. West Palm Beach also agreed to dismiss a lawsuit requesting a declaration that the resolution complies with federal law.

- [Virtual Law Library Weekly Update](#) — EOIR

This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- [AAO Adopts Matter of S- Inc. in PM-602-0159](#)

Adopted Decision 2018-02 (March 23, 2018)

The decision clarifies that the term "related entities" includes petitioners, whether or not related through corporate ownership and control, that file cap-subject H-1B petitions for the same beneficiary for substantially the same job. Absent a legitimate business need to file multiple cap-subject petitions for the same beneficiary, USCIS will deny or revoke the approval of all H-1B cap-subject petitions filed by "related entities" for that beneficiary.

- [AAO Adopts Matter of S-P-, Inc. in PM-602-0158](#)

Adopted Decision 2018-01 (March 19, 2018)

The decision clarifies that a beneficiary who worked abroad for a qualifying multinational organization for at least one year, but left its employ for a period of more than two years after being admitted to the United States as a nonimmigrant, does not satisfy the one-in-three foreign employment requirement for immigrant classification as a multinational manager or executive. To cure the interruption in employment, such a beneficiary would need an additional year of qualifying employment abroad before he or she could once again qualify.

DOL

- [DOL Publishes Notice of Labor Certification Process for the Temporary Employment of H-2A and H-2B Foreign Workers in the United States](#)

DOL announced the annual update to the allowable charges that employers seeking H-2A workers may charge their worker for three meals a day and the maximum travel subsistence meal reimbursement that workers may claim under the H-2A and H-2B programs. The notice also includes a reminder about an employer's obligations regarding overnight lodging costs as part of required subsistence.

Supreme Court

CERT. DENIED

- [Osaigbovo v. Sessions](#)

17-1068, 2018 U.S. LEXIS 1957 (March 26, 2018)

Questions Presented: 1) Whether EOIR's rulings violate the Fifth Amendment due process clause and conflict with the Supreme Court Ruling in *INS v. Elias-Zacarias*, 502 U.S. 478, 483-84 (1992); and 2) Whether EOIR's rulings are in conflict with themselves and conflict with that of Supreme Court in the State of Washington who ruled on the same matter.

- [Davis v. Sessions](#)

17-7583, 2018 U.S. LEXIS 1953 (arch 26, 2018)

No questions presented are available at this time.

Second Circuit

- [Yingshi Li v. Sessions](#)

No. 16-3417, 2018 WL 1474923 (2d Cir. Mar. 27, 2018) (unpublished) (Asylum-ACF)

The Second Circuit granted the PFR, where, in making an adverse credibility finding, the IJ relied on statements made at the petitioner's asylum interview when the interview was not submitted into evidence and it was not clear whether the petitioner admitted to making the questionable statements. The court also found that the IJ erred in relying on statements that the petitioner made to a consular officer for purposes of determining credibility, stating that "making false statements to flee persecution is entirely consistent with the pursuit of asylum."

- [Neng-Meng Yang v. Sessions](#)

No. 16-2695, 2018 WL 1468347 (2d Cir. Mar. 26, 2018) (unpublished) (Asylum-Nexus)

The Second Circuit granted the PFR in part, because in finding that there was no nexus to a protected ground, the BIA overlooked or failed to explain considerable evidence that the petitioner resisted China's family planning policy, that his resistance was recognized by family planning officials, and that family planning officials continued to return to his home to punish him for violating the policy.

Fourth Circuit

- [Sanchez v. Sessions](#)

No. 16-2330, 2018 WL 1473530 (4th Cir. Mar. 27, 2018) (Motion to Suppress)

The Fourth Circuit denied the PFR, holding that the petitioner's motion to suppress was properly denied where he had not demonstrated that he had suffered an "egregious violation" of his rights under the Fourth Amendment.

Fifth Circuit

- [Vazquez v. Sessions](#)

No. 16-60211, 2018 WL 1407070 (5th Cir. Mar. 21, 2018) (Controlled Substances)

The Fifth Circuit withdrew its prior decision of *Vazquez v. Sessions*, 881 F.3d 396 (5th Cir. 2018), after the court granted the respondent's petition for panel rehearing, and substituted a decision denying the PFR. The respondent, who was convicted for possession of a controlled and dangerous substance pursuant to Okla. Stat., title 63, § 2-402(A)(1) (2013), petitioned for review of the Board's decision finding him removable under section 237(a)(2)(B)(i) of the Act. The Court found that the Board erred in its technical application of the categorical approach in the case but denied the petition for review. The Court found that the statute under which the respondent was convicted is facially overbroad under the categorical approach, where the Oklahoma controlled substance schedules contain at least two substances not included in any federal schedule. The Court, however, found that the respondent failed to argue in his brief that the realistic probability test was satisfied in his case, and therefore waived his only viable argument on appeal. The court cited to the rule adopted by the Fifth Circuit in *United States v. Castillo-Rivera*, 853 F.3d 218, 224 n.4 (5th Cir. 2017), that "a defendant must point to an actual state case applying a state statute in a nongeneric manner, even where the state statute may be plausibly interpreted as broader on its face."

Sixth Circuit

- [Perez v. United States](#)

No. 17-3419, 2018 WL 1463507 (6th Cir. Mar. 26, 2018) (Crime of Violence)

The Sixth Circuit held that second degree robbery under N.Y. Penal Law § 160.10 qualifies as a violent felony under § 924(e)(2)(B)(i) of the ACCA, which is analogous to 18 U.S.C. § 16(a), because the New York courts have required a sufficiently high level of force for a conviction under the statute.

- [Soto-Ambrocio v. Sessions](#)

No. 17-4031, 2018 WL 1433828 (6th Cir. Mar. 22, 2018) (unpublished) (Asylum-PSG)

The Sixth Circuit denied the PFR, determining that the petitioner's proposed PSG of "young women from Guatemala subject to abuse from families" was defined by the harm suffered, and lacked particularity and social distinction because "the proposed group could include most females in Guatemala."

Ninth Circuit

- [Rojas v. Johnson](#)

No. C16-1024 RSM, 2018 WL 1532715 (W.D. Wash. Mar. 29, 2018)

The district court granted summary judgment to class plaintiffs on both their claims. First, the Court found that DHS failed to provide notice of the one-year asylum application deadline to class members, and ordered DHS to provide such notice to class members within 90 days, and ordered EOIR to then accept those class members' asylum claims as timely filed for the next year. Second, the Court found that all defendants, including EOIR, failed to provide a uniform mechanism to timely file asylum applications, and ordered all defendants, including EOIR, to implement changes within 120 days. Defendants, including EOIR, must consider whether to appeal within 60 days, i.e. by May 28, 2018.

- [Bautista-Lopez v. Sessions](#)

No. 15-71402, 2018 WL 1476605 (9th Cir. Mar. 27, 2018) (unpublished) (CAT)

The Ninth Circuit granted the PFR in part because the IJ did not address the Mexico 2013 Human Rights Report in ruling on the petitioner's CAT claim. The court recognized that the IJ need not discuss each piece of evidence, but in this case, neither the IJ nor the BIA included "catch all" language which indicated that all evidence had been considered.

- [Portillo-Orellana v. Sessions](#)

No. 14-70821, 2018 WL 1388352 (9th Cir. Mar. 20, 2018) (unpublished) (Asylum-Nexus)

The Ninth Circuit granted the PFR, ruling that the record compelled a finding that one central reason that the petitioner was targeted by Mara 18 was because he was a former member of the Salvadoran National Civilian Police and engaged in anti-gang activity while on the police force, rather than solely out of personal animus.

Eleventh Circuit

- [Menjivar-Sibrian v. U.S. Attorney Gen.](#)

No. 17-12207, 2018 WL 1415126 (11th Cir. Mar. 22, 2018) (unpublished) (Asylum-PSG)

The Eleventh Circuit denied the PFR, affirming the agency decision that the petitioner's

proposed group “women abused by her partner she cannot control” was defined by the harm suffered and the petitioner’s circumstances were distinct from those in Matter of A-R-C-G-, 26 I&N Dec. 388 (BIA 2014).